

tor was applying the assets to objects in conflict with his duty, he deals with him at his peril ; and that a transfer or an assignment, under such circumstances, will, in a court of equity, be set aside, either at the suit of a creditor, a specific, residuary or general legatee.

These views are fully sustained, in the opinion delivered by the Chief Justice of the United States, in the case of *Lowry vs. The Commercial and Farmers Bank of Baltimore et al.*, decided in the Circuit Court for the Maryland District, at its July term in the year 1848. In that case it was held, that though an executor might, according to the law of England, and of this state prior to the act of 1843, ch. 304, sell, or raise money on, the property of the deceased, in the regular execution of his duty, and the party dealing with him is under no obligation to inquire into his object, nor liable for his misapplication of the money ; yet, if the party so dealing with an executor, has, at the time, reasonable ground for believing that he intended to misapply the money, *or is, in the very transaction*, applying it to his own private use, the party dealing with him under such circumstances, is responsible to the persons injured. And in the same case, it was further held, that the party dealing with an executor, as such, has notice of the existence of the will, and of its contents ; the will, in this state, being open to inspection upon the public records.

The case now before this court is stronger against the validity of the transaction in question, than that in the Circuit Court. There, the transaction took place prior to the act of 1843, ch. 304, which imposes restraints upon the power of executors, or administrators, in disposing of the property of their testators or intestates. Here it was subsequent, and it may, I think, very well be doubted, whether, even assuming the law would sanction such a disposition of the assets, by an executor, independent of this statute, it can now be supported. It is, of course, not meant to be said or intimated that an executor may not, notwithstanding the statute, collect moneys due the deceased, without an order of the Orphans Court ; and that a payment would not be valid without such an order. It is the duty